

C O P Y

*in opinion*

October 27, 1954

James J. Barry, Commissioner  
State Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Re: OASI Coverage for Civilian Employees  
of N. H. National Guard

Dear Mr. Barry:

You have inquired as to the proper procedure for affording Social Security coverage to the civilian employees of the National Guard. You have informed me that the Adjutant General's Department states that the federal government will pay the employer's share of contribution but will probably not pay administrative costs as required of the employer by Chapter 234, Laws of 1951.

These civilian employees are under the supervision of the Adjutant General's Department but are paid entirely by federal funds in accordance with a pay scale established by federal rule. This office has consistently held the opinion that these employees are not employees of the State but are rather federal employees.

By the Social Security Amendments of 1954 (Pub. Laws 761 - 83d Congress) section 218 (b) of the Social Security Act was amended so that the following was added at the end thereof:

"Civilian employees of National Guard units of a State who are employed pursuant to section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., sec. 42), and paid from funds allotted to such units by the Department of Defense, shall for purposes of this section be deemed to be employees of the State and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group."

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CONCORD, N.H.

October 27, 1954

- 2 -

James J. Barry

By the provisions of this amendment federal law now authorizes coverage for this class of employee by the expedient of deeming them State employees. However, before coverage could be afforded by an amendment to the Federal-State agreement coverage would have to be permissible under Chapter 234, Laws of 1951, our State enabling act. It is my opinion that coverage is not permissible according to the terms of said Chapter 234.

It is declared by section 1 of the chapter that the policy of the chapter is to extend the protection accorded by the Social Security Act to employees of the State and its political subdivisions on as broad a basis as permitted under the Social Security Act. Thus it is readily apparent from the outset that the enabling act is directed to employees of the State. Civilian Guard employees not being State employees it is impossible to bring them within the protection contemplated by Chapter 234. The fact that by the 1954 amendments to the Social Security Act they are to be deemed State employees for the purpose of the Act does not make them State employees. It does serve to remove any federal barrier from their coverage, and if permitted by State law could be included as a separate coverage group.

If the legislature so saw fit there would be no reason why legislation could not be enacted whereby the State would recognize these employees as State employees for the limited purpose of coming within the purview of said Chapter 234.

A further objection to providing coverage at this time would be the possibility of committing the State to pay the employer's share of contributions for non-state employees in the event the Department of Defense should cease making these payments. The same objection would apply to the payment by the Adjutant General's Department of the appropriate administrative costs.

I return herewith copy of modification and Vermont agreement as requested by you.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCD/aml  
Encls.